

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

RUSSELL ZINTER, *ET AL*

Plaintiffs,

VS.

JOSEPH SALVAGGIO, *ET AL*,

Defendants.

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CIVIL ACTION NO. 5:18-CV-0680-RCL

**DEFENDANT OFFICERS’
NOTICE OF INTERLOCUTORY APPEAL**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE ROYCE C. LAMBERTH:

NOW COMES CITY OF LEON VALLEY CHIEF OF POLICE JOSEPH SALVAGGIO, LT. DAVID ANDERSON, SGT. JOEL URDIALES, DET. ALEX KING, CPL. CHAD MANDRY, CPL. LOUIS FARIAS, OFFICER JOHNNY VASQUEZ, OFFICER JIMMIE WELLS, OFFICER BRANDON EVANS, OFFICER UZIEL HERNANDEZ, OFFICER CLARENCE YARBOROUGH, OFFICER JORGE BRETON, OFFICER JOANN AZAR, OFFICER BENJAMIN CASTRO, OFFICER MIKE TAQUARD, OFFICER ERIKA RIVERA, Individually, (hereinafter referred to as “*Leon Valley Officers*” Defendants in the above entitled and numbered cause, and files this their Notice of Interlocutory Appeal pursuant to 28 U.S.C. §1291, notifying the trial court and other parties of this appeal of the trial court’s denial of **DEFENDANT LEON VALLEY OFFICERS’** Motion for Summary Judgment (Dkt. 149) based upon their plea of qualified immunity from liability and suit and in support thereof would show unto the Court the following:

I.

Plaintiffs’ claims made the basis of this appeal is brought pursuant to 42 U.S.C. §1983 alleging that Plaintiffs’ rights were violated under the First Amendment (Retaliation) and False

Arrest and Excessive force in violation of the Fourth Amendment to the United States Constitution concerning the incident made the basis of this complaint. Specifically, qualified immunity was denied to Defendants **LEON VALLEY OFFICERS** who had affirmatively asserted his defense of “good faith” qualified immunity in their First Amended Answer (Dkt. 92) which is the live pleading in this case.

II.

Defendant **LEON VALLEY OFFICERS**, in their individual capacities, filed their Motion for Summary Judgment (Dkt. 149) on February 23, 2022 and their Reply in Support of their Motion for Summary Judgment (Dkt. 189) on March 18, 2022. *Harlowe v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Mally v. Briggs*, 475 U.S. 335, 345 (1986). Defendants **LEON VALLEY OFFICERS** moved for summary judgment on the basis that Plaintiffs’ constitutional rights were not violated and on the basis, that their actions were objectively reasonable, as a matter of law. *Pearson v. Callahan*, 555 U.S. 223, 234 (2009). On July 7, 2022, United States Senior District Judge Royce C. Lamberth issued his orders denying Defendant **LEON VALLEY OFFICERS’** Motion for Summary Judgment based on qualified immunity. (Dkt. 196 – Sealed); (Dkt. 197 – Sealed); Dkt 200 (Unsealing); and Dkt 201 (Unsealing).

III.

This Court’s denial of Defendant **LEON VALLEY OFFICERS’** Motion for Summary Judgment based on qualified immunity is immediately appealable under the Collateral Order Doctrine to the extent that it concerns an issue of law. *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009); *Behens v. Pelletier*, 516 U.S. 299, 307 (1996). Defendant **OFFICER TULI** having raised his defense of qualified immunity are entitled to an interlocutory appeal of this Court’s denial of their Motion for Summary Judgment. *Mullinex v. Luna*, 577 U.S. 7 (2015); *Plumhoff v. Rickard*, 572 U.S. 765, 776 (2014); *Mitchell v. Forsythe*, 472 U.S. 511, 530 (1985). A copy of this Court’s Orders denying Defendant’s Summary Judgment (Dkt.) 196 – 197; and (Dkt.) 200-201 is hereby marked as Exhibit A.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED Defendants **CITY OF LEON VALLEY** **CHIEF OF POLICE JOSEPH SALVAGGIO, LT. DAVID ANDERSON, SGT. JOEL URDIALES, DET. ALEX KING, CPL. CHAD MANDRY, CPL. LOUIS FARIAS, OFFICER JOHNNY VASQUEZ, OFFICER JIMMIE WELLS, OFFICER BRANDON EVANS, OFFICER UZIEL HERNANDEZ, OFFICER CLARENCE YARBOROUGH, OFFICER JORGE BRETON, OFFICER JOANN AZAR, OFFICER BENJAMIN CASTRO, OFFICER MIKE TAQUARD, OFFICER ERIKA RIVERA**, files his Interlocutory Appeal for purposes of obtaining appellate review of the trial court's denial of his Motion for Summary Judgment (Dkt. 149) based on their affirmative defense of qualified immunity from suit and liability to the constitutional claim alleged against him in their individual capacities.

Respectfully submitted,

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SAPD OFFICER GARY TULI

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of August, 2022, I electronically filed the foregoing Defendant Leon Valley Officers Notice of Appeal with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Charles S. Frigerio
CHARLES S. FRIGERIO